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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,936	12/19/2001	Uri Alon	ALON=2	2874

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EXAMINER

EREZO, DARWIN P

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/020,936

Applicant(s)

ALON ET AL.

Examiner

Darwin P. Erez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 and 17 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-16 and 18-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8, 10-16 and 18-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,113,854 to Dosch et al. in view of US 5,413,097 to Birenheide et al.
3. As to claim 1, Dosch teaches a respirator hood and container assembly comprising a flexible hood **12** with a transparent visor portion; a gas treatment unit comprising a filter **20** and an oxygen generator **22** to force air through the filter, a one-way purge valve **42** for exhaled gases; a sealing portion **14** for sealingly securing the hood over a body portion of the user; a container **58** for the hood; wherein the respirator hood assembly is designed to be compactly received in the container **58** such that immediately upon opening the container (removing cover and pulling neck hoop **16** to activate firing lanyard **62**) the oxygen generator unit is automatically activatable to deploy the hood in an operative state (oxygen is initially released at a high level to fill the hood with respirable gas, which would inherently start to inflate the hood; col. 4, lines 40-41) and the hood becomes conveniently available to the user to provide protection from toxic gases and particulate material.

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Dosch teaches an oxygen generator but is silent with regards to a gas treatment unit comprising a filter and a power-operated blower.

Birenheide teaches a respiratory device comprising a gas treatment unit having a filter **3** and a power-operated gas blower **41**.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the oxygen generator of Dosch with the power-operated gas blower of Birenheide because it provides the user with breathable air for a longer period of time since it is not dependent on chemical reactions to provide oxygen.

4. As to claims 2-7, Dosch teaches the assembly, wherein the container comprises a front **60** and rear cover **58**, wherein separation of one cover from another allows opening the container and immediate deployment of the respirator hood, where the body portion has a neck-engaging collar **14**, wherein the sealing portion is designed to easily stretch over the head of the user and sealingly fit around the neck of the user; wherein the sealing portion extends over a user's torso (see Fig. 6); wherein the hood is suitable for use with an animal.

5. As to claim 8, the above combination of Dosch/Birenheide teaches a detachable member, the firing lanyard **62**, which activates the power-operated blower.

6. As to claims 10-16 and 18-28, Dosch teaches the container having front and rear cover, wherein the rear cover is attached via the lanyard **62** to the gas treatment unit; wherein the respiratory hood assembly is within the container; wherein the container has a handle (See Fig. 2); wherein the assembly has an operative state and a storage state; wherein the container is rigid, as depicted in Fig. 2; wherein a firing lanyard **62**

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activates the gas treatment unit, wherein the firing lanyard 62 is attached to the container; wherein the hood protects from toxic gases, wherein oxygen generator is provided with a mechanically activatable switch; wherein the assembly is capable of being carried in a purse or briefcase; wherein the assembly can be used with both children and adults regardless of facial features, wherein the oxygen generator is fixed to the respiratory hood; and wherein the oxygen generator forces air into the hood.

Allowable Subject Matter

7. Claims 9 and 17 are allowed.

Response to Arguments

8. Applicant's arguments filed 10/27/2003 have been fully considered but they are not persuasive.

9. In response to applicant's arguments that Dosch et al. fails to teach an assembly that is immediately activated upon opening, it should be noted that the applicant must recite structural differences in the claim to distinguish from the prior art, i.e., the functional language of "immediately upon opening the gas container said gas treatment is automatically activatable to deploy the hood" does not provide any structural differences from what Dosch teaches. Furthermore, Dosch does teach an assembly that is immediately activated upon opening since the applicant has not provided any recitation as to what is considered to be "immediately activated upon opening", i.e., the limitation is a relative term.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (703) 605-0420. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dawson can be reached on 703-308-4304. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


GLENN K. DAWSON
PRIMARY EXAMINER

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